

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JEIDY PENA, an individual

Plaintiff,

v.

CHIPOTLE MEXICAN GRILL, INC.,

Defendant.

No. 2:18-cv-00574-MJP

STIPULATED PROTECTIVE ORDER

The parties hereby agree, through their respective undersigned counsel, to the following
Confidentiality Agreement:

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. "CONFIDENTIAL" MATERIAL

"Confidential" material shall include the following documents and tangible things produced or otherwise exchanged: (1) financial information, including but not limited to payroll records, tax returns, financial statements, banking records, brokerage records, and electronic data containing financial information; (2) medical records and healthcare information, including but not limited to any counseling records, pertaining to individuals, and (3) employment and application records including records referencing a person's personal information, such as education, date of birth, contact information, immigration status, social security numbers, medical information, and employment history.

3. SCOPE

The protections conferred by this agreement cover not only confidential material (as defined above), but also (1) any information copied or extracted from confidential material; (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal confidential material.

However, the protections conferred by this agreement do not cover information that is in the public domain or becomes part of the public domain through trial or otherwise.

1 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

2 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
3 or produced by another party or by a non-party in connection with this case only for prosecuting,
4 defending, or attempting to settle this litigation. Confidential material may be disclosed only to
5 the categories of persons and under the conditions described in this agreement. Confidential
6 material must be stored and maintained by a receiving party at a location and in a secure manner
7 that ensures that access is limited to the persons authorized under this agreement.

8 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
9 ordered by the court or permitted in writing by the designating party, a receiving party may
10 disclose any confidential material only to:

11 (a) the receiving party’s counsel of record in this action, as well as employees
12 of counsel to whom it is reasonably necessary to disclose the information for this litigation, and
13 other outside legal counsel;

14 (b) a party, the officers, directors, and employees (including in house counsel)
15 of the receiving party to whom disclosure is reasonably necessary for this litigation, unless the
16 parties agree that a particular document or material produced is for Attorney’s Eyes Only and is
17 so designated;

18 (c) experts and consultants to whom disclosure is reasonably necessary for
19 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
20 A);

21 (d) the court, court personnel, and court reporters and their staff;

22 (e) independent litigation support services, including persons working for or
23 as court reporters, graphics or design services, photocopy or imaging services, and database
24 services retained by counsel to assist in the duplication of confidential material, provided that
25 counsel for the party retaining these services instructs the service not to disclose any confidential
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1 material to third parties and to immediately return all originals and copies of any confidential
2 material;

3 (f) during their depositions, witnesses in the action to whom disclosure is
4 reasonably necessary, or potential witnesses who have signed the “Acknowledgment and
5 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the designating party or
6 ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that
7 reveal confidential material must be separately bound by the court reporter and may not be
8 disclosed to anyone except as permitted under this agreement;

9 (g) the author or recipient of a document containing the information or a
10 custodian or other person who otherwise possessed or knew the information;

11 (h) the videographer who videotapes Confidential Information at a
12 deposition in this litigation;

13 (i) any mediator in this litigation, and employees and personnel of said
14 mediator;

15 (j) any other individuals agreed to in writing by the designating party.

16 4.3 Filing Confidential Material. Before filing confidential material or discussing or
17 referencing such material in court filings, the filing party shall confer with the designating party
18 to determine whether the designating party will remove the confidential designation, whether the
19 document can be redacted, or whether a motion to seal or stipulation and proposed order is
20 warranted. The parties will endeavor to confer at least two days before filing confidential
21 information. Local Civil Rule 5(g) sets forth the procedures that must be followed and the
22 standards that will be applied when a party seeks permission from the court to file material under
23 seal.

24 5. DESIGNATING PROTECTED MATERIAL

25 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
26 or non-party that designates information or items for protection under this agreement must take

1 care to limit any such designation to specific material that qualifies under the appropriate
2 standards. The designating party must designate for protection only those parts of material,
3 documents, items, or oral or written communications that qualify, so that other portions of the
4 material, documents, items, or communications for which protection is not warranted are not
5 swept unjustifiably within the ambit of this agreement.

6 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
7 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
8 unnecessarily encumber or delay the case development process or to impose unnecessary
9 expenses and burdens on other parties) expose the designating party to sanctions.

10 If it comes to a designating party's attention that information or items that it designated
11 for protection do not qualify for protection, the designating party must promptly notify all other
12 parties that it is withdrawing the mistaken designation.

13 5.2 Manner and Timing of Designations. Except as otherwise provided in this
14 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or
15 ordered, disclosure or discovery material that qualifies for protection under this agreement must
16 be clearly so designated before or when the material is disclosed or produced.

17 (a) Information in documentary form: (*e.g.*, paper or electronic documents
18 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
19 proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that
20 contains confidential material. If only a portion or portions of the material on a page qualifies
21 for protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by
22 making appropriate markings in the margins).

23 (b) Testimony given in deposition or in other pretrial proceedings: the parties
24 and any participating non-parties must identify on the record, during the deposition or other
25 pretrial proceeding, all protected testimony, without prejudice to their right to so designate other
26 testimony after reviewing the transcript. Any party or non-party may, within three days after

1 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the
2 transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect
3 confidential information at trial, the issue should be addressed during the pre-trial conference.
4 Until expiration of the three-day period, the entire deposition or hearing transcript shall be treated
5 as confidential.

6 (c) Other tangible items: the producing party must affix in a prominent place
7 on the exterior of the container or containers in which the information or item is stored the word
8 “CONFIDENTIAL.” If only a portion or portions of the information or item warrant protection,
9 the producing party, to the extent practicable, shall identify the protected portion(s).

10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
11 designate qualified information or items does not, standing alone, waive the designating party’s
12 right to secure protection under this agreement for such material. Upon timely correction of a
13 designation, the receiving party must make reasonable efforts to ensure that the material is treated
14 in accordance with the provisions of this agreement.

15 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 6.1 Timing of Challenges. A party shall not be obligated to challenge the confidential
17 designation at the time made, but must do so prior to the deadline for Motions in Limine in this
18 case. If any party to this litigation disagrees with such designation, such party shall provide to
19 the producing or third party written notice of its disagreement with the designation. The parties
20 shall first try to resolve such dispute in good faith on an informal basis. If the dispute cannot be
21 resolved, the party challenging the designation may request appropriate relief from the Court. The
22 burden of proving that information has been properly designated as confidential is on the party
23 making such designation.

24 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
25 regarding confidential designations without court involvement. Any motion regarding
26 confidential designations or for a protective order must include a certification, in the motion or

1 in a declaration or affidavit, that the movant has engaged in a good faith meet and confer
2 conference with other affected parties in an effort to resolve the dispute without court action.
3 The certification must list the date, manner, and participants to the conference. A good faith
4 effort to confer requires a face-to-face meeting or a telephone conference.

5 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
6 intervention, the designating party may file and serve a motion to retain confidentiality under
7 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
8 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
9 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on
10 other parties) may expose the challenging party to sanctions. All parties shall continue to
11 maintain the material in question as confidential until the court rules on the challenge.

12 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
13 LITIGATION

14 If a party is served with a subpoena or a court order issued in other litigation that compels
15 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that
16 party must:

17 (a) promptly notify the designating party in writing and include a copy of the
18 subpoena or court order;

19 (b) promptly notify in writing the party who caused the subpoena or order to
20 issue in the other litigation that some or all of the material covered by the subpoena or order is
21 subject to this agreement. Such notification shall include a copy of this agreement; and

22 (c) cooperate with respect to all reasonable procedures sought to be pursued
23 by the designating party whose confidential material may be affected.

24 If the designating party seeks a protective order within 14 days of the date of service of
25 the notification, the party served with the subpoena or court order shall not produce any
26 confidential material before a determination by the court from which the subpoena or order

1 issued, unless the Party has obtained the producing party's permission. The producing party shall
2 bear the burden and expense of seeking protection in that court of its confidential material. If
3 the party served with the subpoena or court order is required by that subpoena or court order to
4 produce the materials at issue before the court rules on the designating party's motion for a
5 protective order, then producing those materials in compliance with the subpoena or court order
6 does not constitute a violation of this agreement.

7 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

8 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
9 material to any person or in any circumstance not authorized under this agreement, the receiving
10 party must immediately (a) notify in writing the designating party of the unauthorized
11 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,
12 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms
13 of this agreement, and (d) request that such person or persons execute the "Acknowledgment
14 and Agreement to Be Bound" that is attached hereto as Exhibit A.

15 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
16 MATERIAL

17 When a producing party gives notice to receiving parties that certain inadvertently
18 produced material is subject to a claim of privilege or other protection, the obligations of the
19 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
20 provision is not intended to modify whatever procedure may be established in an e-discovery
21 order or agreement that provides for production without prior privilege review. The parties
22 agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

23 10. NON TERMINATION AND RETURN OF DOCUMENTS

24 Within 60 days after the termination of this action, including all appeals, each receiving
25 party must return all confidential material to the producing party, including all copies, extracts
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1 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
2 destruction.

3 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
4 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
5 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
6 work product as part of the client file, even if such materials contain confidential material,
7 which either party may maintain for up to six years as recommended by the *WSBA Guide to*
8 *Best Practices for Client File Retention and Management*, even if such materials contain
9 confidential material. While counsel may retain Confidential material in compliance with the
10 *WSBA's Guide to Best Practices for Client File Retention and Management*, counsel may not
11 disclose any Confidential material in any way that would violate this Confidentiality
12 Agreement.

13 The confidentiality obligations imposed by this agreement shall remain in effect until a
14 designating party agrees otherwise in writing or a court orders otherwise.

15 11. MODIFICATION

16 Each of the Parties shall also retain the right to file a motion with the Court (a) to modify
17 this Stipulated Protective Order to allow disclosure of, confidential information to additional
18 persons or entities if reasonably necessary to prepare and present this action and (b) to apply for
19 additional protection of confidential information.
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21 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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1 DATED: _____

2 By: s/ Robin J. Shishido
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12 DATED: _____

13 By: /s Eric Harrison
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20 *Attorneys for Plaintiff*

21 DATED: _____

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Attorneys for Defendant

1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of
3 any documents in this proceeding shall not, for the purposes of this proceeding or any other
4 proceeding in any other court, constitute a waiver by the producing party of any privilege
5 applicable to those documents, including the attorney-client privilege, attorney work-product
6 protection, or any other privilege or protection recognized by law.
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8 DATED: September 17, 2018
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12 The Honorable Marsha J. Pechman
13 United States Senior District Court Judge
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5 EXHIBIT A

6 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

7 I, _____ [print or type full name], of
8 _____ [print or type full address], declare under penalty
9 of perjury that I have read in its entirety and understand the Stipulated Protective Order that was
10 issued by the United States District Court for the Western District of Washington on [date] in
11 the case of *Jeidy Pena v. Chipotle Mexican Grill, Inc.*, No. 2:18-cv-00574. I agree to comply
12 with and to be bound by all the terms of this Stipulated Protective Order and I understand and
13 acknowledge that failure to so comply could expose me to sanctions and punishment in the nature
14 of contempt. I solemnly promise that I will not disclose in any manner any information or item
15 that is subject to this Stipulated Protective Order to any person or entity except in strict
16 compliance with the provisions of this Order.

17 I further agree to submit to the jurisdiction of the United States District Court for the
18 Western District of Washington for the purpose of enforcing the terms of this Stipulated
19 Protective Order, even if such enforcement proceedings occur after termination of this action.

20 Date: _____

21 City and State where sworn and signed: _____

22 Printed name: _____

23 Signature: _____
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